

Conversely, claimant argues that respondent hired him as a delivery driver and, therefore, the October 2002 accident arose out of and in the course of his employment with

respondent. Accordingly, claimant requests the Board to affirm the March 31, 2003 Order for Compensation.

The only issue before the Board on this appeal is whether claimant was working for respondent as an employee when the October 8, 2002 accident occurred.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the file compiled to date and the parties' arguments, the Board finds and concludes that claimant's request for benefits against this respondent should be denied. The Board concludes that the record fails to prove that claimant was an employee of respondent at the time of the accident.

Claimant was injured on October 8, 2002, when a round bale of hay fell, striking claimant. The accident occurred after claimant had driven a load of the large round bales to Colorado at William Murr's request. That hay had been grown on the Murr farm. This trip to Colorado occurred shortly after claimant had made an earlier trip to Colorado in which he delivered hay that was grown, sold and purchased by persons other than the Murrs. The truck claimant drove to Colorado was titled to respondent but the trailer was titled to the Murrs.

As indicated above, respondent is a limited liability company. Although the Murrs own and operate both respondent and a farm, they attempt to keep the supply store operations separate from the farming operations by using separate bank accounts for each. Before the October 8, 2002 accident, the Murrs issued claimant one check, which was drawn on the farm account. The Murrs paid claimant 30 percent of the total freight charges for both Colorado trips.

Respondent's primary business is the sale and application of agricultural chemicals and fertilizers. Respondent does not engage in delivering hay or other agricultural products. Indeed, respondent does not have the necessary permits to haul agricultural products but Mr. Murr does.

The Board finds that respondent had no positions available when claimant applied for work as it had already filled the fertilizer applicator position that it had advertised in the newspaper. Mr. Murr, however, had agreed to haul a load of someone else's hay from Missouri to Colorado. Additionally, Mr. Murr had a load of his own hay that he needed to deliver in Colorado. Because claimant was an experienced driver, Mr. Murr asked claimant if he would haul the hay. Claimant agreed. When these conversations took place, claimant was not told that he would be working for respondent. According to claimant, he only assumed that he would be working for respondent because he had seen respondent's help-wanted ad in the local newspaper for a fertilizer applicator.

According to claimant, Mr. Murr hired him to deliver the hay and to learn to spread manure. Claimant testified that he was told he would be paid \$8.50 per hour, which would increase to \$12.50 per hour once he learned to operate the equipment. But, according to Mr. Murr, respondent neither sells nor spreads manure.

The Board concludes that claimant has failed to prove that he was either employed by, or working for, respondent at the time of the accident. The greater weight of the evidence is that respondent does not deliver hay, or other agricultural products, as part of its business operations. The evidence fails to establish that respondent had undertaken to haul the hay in question to Colorado or that claimant was employed to perform any activities that furthered respondent's business interests. Indeed, it is unfortunate that claimant was injured. But the request for benefits against this employer must be denied.

**WHEREFORE**, the Board reverses the March 31, 2003 Order for Compensation and denies claimant's request for benefits.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 2003.

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BOARD MEMBER

c: George H. Pearson, Attorney for Claimant  
Jeffrey E. King, Attorney for Respondent and its Insurance Carrier  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director